IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 886 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADRAI UDAYSHANKAR BHATT & 1 - Petitioner(s)
Versus
HANSABEN KESHAVLAL JOSHI - Respondent(s)

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Appearance :
MR RM CHHAYA for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/01/2007

ORAL JUDGMENT

Rule. No one appears on behalf of respondent.

2. The petitioners have filed this petition under Article 227 of the Constitution of India with a prayer to issue appropriate writ, order or direction by quashing and setting aside the order dated 7th March 2003 passed in Civil Misc.Appeal No.126 of 2002 passed by the learned 3rd Extra Assistant Judge, Rajkot and the order dated 28th Oct.2002 passed below Exh.5 in Regular Civil Suit No.1354 of 2002 passed by the learned Civil Judge (JD), Rajkot.

3. The petition was filed on 3rd Sept.2003.

4. The petitioners are original defendants of Regular Civil Suit No.1345 of 2002 filed by the respondent plaintiff for declaration and injunction pending before the Civil Court (SD), Rajkot. The original plaintiff filed the said suit praying for declaration and injunction to the effect that they are the owners of land bearing Plot No.39 situated in Vidhyanagar Housing Colony at Rajkot. It is alleged in the suit by the respondent plaintiff that the said property was purchased on 20th Aug.1975 from one Shri Chhaganlal Danabhai Vaghela and that the petitioners defendants are making construction over the said open land without any authority on the said land admeasuring approximately 450 sq.mtrs.

5. The petitioners filed their reply to the suit as well as injunction application at Exh.5 in the suit.

6. Really, the land in question was belonging to

one Shri Ghanshyambhai Bhatt, who had purchased the property in question in the name of the respondent plaintiff and as per the desire of Shri Ghanshyambhai Bhatt, the land in question was bequeathed to Pathak Bhatt Family Committee to construct Temple of their "Kuldev Shri Narsinhji Bhagavan" etc., and as per the wishes of late Shri Ghanshyambhai Bhatt, the possession of the land in question was given in public function by the respondent plaintiff, and on that basis, a Trust has been created wherein the petitioners are the Trustees and a Temple has been constructed on the land in question and at present, even the deity has been installed and puja is being performed in the Temple. A gift deed has been executed by the respondent plaintiff and the gift has been accepted by the petitioners herein original -defendants.

7. A Trust under the name of "Shri Laxmi Narsinhrai Charitable Trust" being Registration No.3975 dated 31st May 1996 was formed.

8. The respondent plaintiff filed the present suit wherein the learned Civil Judge, Rajkot allowed the injunction application Exh.5 ordering status-quo.

9. Being aggrieved with the said order, the petitioners filed Civil Misc.Appeal No.126 of 2002 wherein also the learned 3rd Extra Assistant Judge, Rajkot confirmed the order passed in Regular Civil Suit No.1354 of 2002 below application Exh.5.

10. I have heard learned Advocate for the petitioners. This matter arises out of two concurrent finding of facts. The learned Judge has not properly appreciated the evidence on record and no cogent and convincing reasons are given. Hence, this Court is of the opinion that this matter requires a remand. Therefore, without entering into the merits of the case, the matter is remanded to the Appellate Court by quashing and setting aside the impugned orders of the Courts below. The concerned Court is requested to hear and decide the matter afresh without being influenced by this judgment in accordance with law as expeditiously as possible but not later than 30th June 2007. The petition is allowed to the aforesaid extent and the Rule is made absolute accordingly. No order as to costs.

(K.M.Mehta, J.)

Sreeram.